

1 **WO**

2
3
4
5
6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8
9 Timothy Youso and Michelle Youso,
10 Plaintiffs,
11 vs.
12 Pharmacists Mutual Insurance Company,
13 Defendant.

No. CV-11-8057-PCT-NVW

ORDER

14 Before the Court is Plaintiffs' Motion for New Trial (Doc. 53) under Fed. R. Civ.
15 P. 59.

16 **I. LEGAL STANDARD**

17 "Although Rule 59(e) permits a district court to reconsider and amend a previous
18 order, the rule offers an extraordinary remedy, to be used sparingly in the interests of
19 finality and conservation of judicial resources." *Kona Enters., Inc. v. Estate of Bishop*,
20 229 F.3d 877, 890 (9th Cir. 2000) (internal quotation marks and citation omitted). "A
21 Rule 59(e) motion may *not* be used to raise arguments or present evidence for the first
22 time when they could reasonably have been raised earlier in the litigation." *Id.*
23 "Reconsideration under Rule 59(e) is appropriate if (1) the district court is presented with
24 newly discovered evidence, (2) the district court committed clear error or made an initial
25 decision that was manifestly unjust, or (3) there is an intervening change in controlling
26 law." *SEC v. Platforms Wireless Int'l Corp.*, 617 F.3d 1072, 1100 (9th Cir. 2010).
27 "Unless justice requires otherwise, no error in admitting or excluding evidence—or any
28 other error by the court or a party—is ground for granting a new trial, for setting aside a

1 verdict, or for vacating, modifying, or otherwise disturbing a judgment or order. At every
2 stage of the proceeding, the court must disregard all errors and defects that do not affect
3 any party's substantial rights." Fed. R. Civ. P. 61.

4 **II. ANALYSIS**

5 Plaintiffs contend that the Order (Doc. 46) granting Defendants summary
6 judgment included three errors: (1) reliance on evidence held to be inadmissible hearsay
7 and other evidence for which foundation objections were overruled; (2) determining that
8 issues regarding Coverage C (personal property) could be decided as a matter of law
9 despite disputed facts; and (3) misinterpreting the application of Coverage B (related
10 structure). Plaintiffs do not contend that reconsideration is justified because of newly
11 discovered evidence or an intervening change in controlling law.

12 The Order sustained hearsay objections to specific paragraphs of Defendant's
13 separate statement of facts "to the extent that the paragraphs assert the truth of statements
14 made within correspondence attached as Exhibits 11 and 12 to the Declaration of Kirk
15 Benson (Doc. 38)," but found admissible "Mr. Benson's declaration asserting that he
16 received the attached correspondence, including specific bids for repairing Plaintiffs'
17 residence." Mr. Benson's declaration stated that he had determined that the policy would
18 provide coverage for loss to Plaintiffs' residence, including debris removal, of
19 \$400,339.95. The declaration also stated that Exhibit 11 was a true and correct copy of
20 correspondence from Bruce Thomson of Frontier Adjusters. Mr. Benson received Mr.
21 Thomson's correspondence and the enclosed letter from Bob Brown of R.M.B. Inc., dba
22 Apple Construction Company, agreeing to do the repair work for \$400,339.95. The
23 relevancy of the bid is the fact it was made in the stated amount within policy limits. The
24 substance of the bid was not hearsay. The fact and the good faith of the bid are
25 undisputed.

26 Regarding Coverage C (personal property), the Court did not misunderstand that
27 Defendant paid Plaintiffs \$132,181.32 based on an incomplete personal property
28 inventory they submitted to Defendant. The Complaint alleges that Defendant breached

1 its contract and acted in bad faith by failing to timely and reasonably compensate
2 Plaintiffs for their personal property losses, but Plaintiffs did not submit to Defendant a
3 complete inventory of personal property for which they sought compensation until a year
4 after initiating this lawsuit. Defendant could not have breached its contract and acted in
5 bad faith by failing to timely and reasonably compensate Plaintiffs as alleged in the
6 Complaint if Plaintiffs had not yet submitted to Defendant a complete inventory. Further,
7 it is irrelevant that Defendant knew that Plaintiffs believed they were entitled to more
8 than \$132,181.32 if Plaintiffs did not provide Defendant with a personal property
9 inventory showing a loss greater than \$132,181.32. Therefore, the Court did not err by
10 finding that Plaintiffs had submitted no evidence to the Court that they were entitled to
11 more compensation than what they were paid for loss of personal property.

12 Regarding Coverage B (related structures), Plaintiffs contend that Coverage B
13 adds 10% to the Coverage A limit when the replacement cost of any damaged related
14 private structures is less than \$1,000, and because no related structures were damaged,
15 the Coverage A limit should have been increased by 10%. Although the Coverage B
16 limit is initially established as 10% of the Coverage A limit before periodic adjustments,
17 the relevant policy endorsement, which is titled “Increased Coverage A Limit,” does not
18 mention 10% or damage. Rather, it states that when the combined replacement cost of all
19 detached related private structures is less than \$1,000, the amount of the Coverage B limit
20 will be added to the Coverage A limit. In other words, even though the insured was
21 required to pay for coverage for related structures, if there were no related structures or
22 the existing related structures could be replaced for less than \$1,000, the coverage for
23 related structures, which would be essentially useless, would be added to the coverage for
24 the residence. But Defendant denied the “increased Coverage A limit” because Mr.
25 Benson opined that the detached stone retaining wall had a replacement value exceeding
26 \$1,000. Plaintiffs did not offer evidence on summary judgment to dispute that opinion.
27 Therefore, the Coverage A limit was not increased, and there was no basis for any
28

1 compensation under Coverage B because the retaining wall was not in need of repair or
2 replacement.

3 IT IS THEREFORE ORDERED that Plaintiffs' Motion for New Trial (Doc. 53) is
4 denied.

5 Dated this 8th day of April, 2013.

6
7 

8 _____
9 Neil V. Wake
10 United States District Judge
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28